

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Defining Primary Lines

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CC Docket No. 97-181

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COMMENTS OF U S WEST, INC.

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September 25, 1997

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In its Comments in both the Universal Service proceeding the Access Charge Reform proceeding, U S WEST stated its concern that, whatever the theoretical merits of this sort of differentiation, it would prove quite difficult to administer.⁴ A review of the Notice does nothing to dispel U S WEST's concerns. Consider that the Notice includes consideration of reporting requirements (self certification), proposals for national databases, methods to verify the information (audits and models), enforcement mechanisms and sanctions. The industry is about to give birth to a whole new bureaucracy.

The difficulties attendant to implementing and administering this program highlight the need for wise choices in this proceeding. By choosing well, the Commission can minimize these difficulties; by choosing poorly, the Commission may create an unmanageable monster.

II. DEFINING "SINGLE-LINE BUSINESS LINES" AND "PRIMARY RESIDENTIAL LINES"

As noted, the Commission's decision to differentiate "primary" and "secondary" residential lines requires it to define those terms. In addition, the Commission must define a "single-line business line," so that it may implement its decision to permit incumbent LECs to charge multiple-line businesses a higher SLC and a higher PICC.

⁴ Response of U S WEST, Inc. to Recommended Decision, CC Docket No. 96-45, filed Dec. 19, 1996 at 25; Comments of U S WEST, Inc., CC Docket Nos. 96-262, et al., filed Jan. 29, 1997 at 56-58.

A. The Commission Should Define Primary Residential Lines By Reference To The Customer's Premises (Notice ¶¶ 6-7)

As the Notice suggests,⁵ the Commission has essentially two choices in defining primary residential lines. It can define such lines by reference to the residence itself (a premises approach), or by reference to the persons dwelling within that residence (a billing-name approach). Though neither option is perfect, U S WEST believes a premises approach will prove easier to administer and has a better chance of achieving the Commission's goals.

U S WEST thus believes the Commission should define a primary line as the line that has been installed to a residence (service address) for the greatest length of time. That is, if a customer installs line A, and subsequently installs line B, line A is the primary line; if the customer subsequently installs line C and disconnects line A, line B becomes the primary line. For this purpose, a "residence" is a self-contained housing unit with separate cooking and sleeping facilities, used primarily for domestic purposes. A residence may be a single-family dwelling, or an individual unit within a multi-unit dwelling (e.g., duplex, townhouse, apartment, condominium.)⁶

⁵ Notice ¶ 6.

⁶ The definition is thus similar to the Census Bureau's definition of a "household." (Id. n.26.) The Notice asks whether the Commission should rely on existing definitions (e.g., the definition of "household" noted here, or IRS definition of "head of household") because consumers may be more familiar with those definitions. (Id. ¶ 7.) We think it unlikely that consumers will have much experience with or knowledge of the cited examples, and this should not be a significant factor in developing a definition. The more important factor will be to craft the definition that will best fulfill the Commission's goals, while providing administrative workability.

Though imperfect, U S WEST believes this approach offers advantages over a billing-name approach, which would define a primary line by reference to the individuals living within a premises. A billing-name approach would give rise to a need for some sort of certification process. The Notice proposes to address this by allowing incumbent LECs to have their customers self-certify as a means of identifying primary lines.⁷ Such a program virtually invites customers to misrepresent their situation. They need only change the billing name on a secondary line, and it becomes a primary line, saving the customer a few dollars a month. Absent intrusive and costly monitoring, an incumbent LEC could not hope to detect such gaming. Indeed, if the Commission were to define a primary line in this fashion, having multiple subscribers (and thus multiple primary lines) in a single residence would seem wholly legitimate.

This approach would also require greater (and more costly) verification efforts to ensure that incumbent LECs do not over-report their primary lines.⁸ Incumbent LECs will almost certainly find themselves caught in the middle between their customers and other carriers. Given the subjectivity of such a definitional scheme, attempting to resolve these matters will prove costly and time-consuming.

A premises-based definition ameliorates these problems. The advantage to this approach is that a “residence” is relatively immutable. An existing dwelling can, to be sure, be subdivided to create multiple residences, but no one would

⁷ Id. ¶ 9.

undertake such an endeavor solely to save a few dollars a month on a telephone line. While it offers opportunities for fraud, a premises-based definition is less subject to these abuses than one based on subscribers. A customer might misrepresent the character of a premises, but this is more easily verified than a customer's status.

A billing-name approach is also likely to drive up the LECs' costs. If customers can avoid the charges associated with having a secondary line by the simple expedient of subscribing to a primary line under a different name, many will do so. U S WEST believes a billing-name approach will cause its customers to subscribe to as many as 600,000 more primary lines than would be the case with its proposal (see below). U S WEST would have to manage those additional accounts, which means additional records to process, additional bills to render, and additional payments to deal with. All of these functions entail additional costs to U S WEST, costs that must ultimately be borne by its customers.

A premises approach would not allow for situations in which multiple families or unrelated persons share a single residence; only one line to the residence would be primary. That, however, seems the lesser evil – if it is an evil at all. The alternative would be far fewer secondary lines and ongoing contention between incumbent LECs, their customers and other carriers.

The Notice requests an estimate of the number of lines that would be

⁸ See id. ¶ 17.

classified as primary and secondary under our proposal.⁹ Exhibit A provides a very rough estimate of the relative effects of a “location” approach versus a “billing number” approach. U S WEST estimates that its proposal will result in twice the number of secondary lines among its customers that a billing-account definition would produce (1.2 million to 600,000). In all probability, the difference would be greater because a billing-account definition would offer greater opportunities to game the system.

B. Single-Line Business Lines (Notice ¶ 5)

The Notice asks whether the Commission should revise its definition of “single-line business line.”¹⁰ U S WEST believes this definition is adequate for this task. Nor do we see any point to addressing the situation of a business customer who orders one line from the incumbent LEC and a second line from a competitive LEC. The latter are not subject to these rules, and attempting to distinguish which line might be primary in this situation is unlikely to be worth the effort.

III. ADMINISTRATIVE MATTERS (Notice ¶¶ 8-22)

In addition to seeking possible definitions of “primary lines,” the Notice raises a number of issues related to the administration of this program. The answers to these questions will depend, in large part, on the definition selected by the Commission. The residence-based definition proposed by U S WEST will, we

⁹ Id. ¶ 7.

¹⁰ Id. ¶ 5. “A line shall be deemed to be a single line business line if the subscriber pays a rate that is not described as a residential rate in the local exchange service tariff and does not obtain more than one such line from a particular telephone

think, prove far easier to administer than any other alternative.

A. Identification Of Primary Residential Lines (Notice ¶¶ 8-15)

The Notice tentatively concludes that identifying a primary line requires identification of the subscriber, residence, or household; identification of the primary residence of the subscriber or household; identification of the primary line, and of the carriers serving that line.¹¹ If the Commission adopts U S WEST's proposed definition of a primary line, the categories of information noted above would be sufficient to identify primary lines; the primary residence of the subscriber would indeed be unnecessary under U S WEST's definition. Assuming the other information could be gathered reasonably, it would be sufficient.

Gathering the information raises substantial issues. The Notice tentatively concludes that the Commission should permit the incumbent LECs to use customer self-certification to identify primary lines.¹² U S WEST has no quarrel with that, so long as it remains permissive rather than mandatory. Customer self-certification can work only if the failure to certify imposes some penalty on the customer; without that, very few customers will go to the trouble. Thus, if a carrier chooses to use customer self-certification, it should be permitted to treat any uncertified lines as secondary, after a reasonable grace period. Without that incentive, very few existing customers will ever provide the necessary information.

company." 47 C.F.R. § 69.104(h). A "telephone company" for this purpose is an incumbent LEC.

¹¹ Notice ¶ 8.

¹² Id. ¶ 9.

U S WEST would prefer to avoid customer self-certification and its pitfalls. That will likely be possible only if the Commission adopts a residence-based definition, such as the one proposed by U S WEST. Customer records are likely sufficient to provide the information necessary to implement such a definition. An incumbent LEC will know a customer's service address, and how many of its lines serve that residence, whether they are provided directly by the incumbent, or by a reseller. The "oldest" such line would then become primary, and all other lines secondary.

Lines provided by competitive LECs (other than resellers) should not factor into this. That is, if a customer has both lines provided by the incumbent and lines provided by a competitor, the first line provided by the incumbent is primary, no matter when it was installed relative to any of the competitor's lines. Competitive LECs are not subject to these requirements, and there is no good reason to consider their lines. In any case, they are likely to affect the classification of a residential line in only a handful of cases.¹³

U S WEST agrees with the Notice that the Commission should not institute a nationwide database to track nationwide primary lines.¹⁴ Each incumbent LEC will undoubtedly need some sort of database to track primary lines in any event. A nationwide database would add little or nothing of value to that, and it would

¹³ Competitive LEC lines would make a difference only when the incumbent provides more than one line to a customer and the competitor also provides a line that is "older" than any of the incumbent's, an unlikely set of circumstances in the near term.

¹⁴ Notice ¶ 14.

exacerbate the privacy concerns discussed below.¹⁵

Note, however, that establishing appropriate databases (or modifying existing databases) to track these records is a substantial undertaking that will require the incumbent LECs to invest considerable time and expense. It is one of the more compelling reasons that the Commission should allow the incumbent LECs sufficient time to prepare for the implementation of this program.

B. Privacy Issues (Notice ¶ 16)

The incumbent LECs' handling of the information needed to classify lines as primary or secondary will raise significant privacy concerns. That information relates at least to the quantity, type and destination of a customer's service; it is thus customer proprietary network information ("CPNI"), as the Communications Act defines that term.¹⁶ Though nothing in the Act would prevent the incumbent LECs from using this information to identify primary and secondary lines,¹⁷ they will need to take steps to ensure that the information is available to only those of their employees who need the information for that purpose. This may require the creation of a unit dedicated to that process.

¹⁵ U S WEST also agrees with the tentative conclusion not to use county and municipal records to identify primary lines. (*Id.* ¶ 15.) Such records are unlikely to provide meaningful information, and using them would increase the administrative difficulties associated with this program, given that they will be in a variety of formats and are intended to serve entirely different purposes.

¹⁶ 47 U.S.C. § 222(f)(1)(A).

¹⁷ 47 U.S.C. § 222(c)(1) of the Act allows a carrier to use CPNI "as required by law," which must include lawful orders of the Commission; 47 U.S.C. § 222(d)(1) allows a carrier to use CPNI to "bill and collect for telecommunications services."

As discussed below, the proposal to have the Commission conduct audits of the incumbent LECs' primary line counts raises additional privacy concerns.

C. Consumer Disclosure (Notice ¶ 22)

The Notice proposes a form of notification and asks whether LECs who charge an SLC to their customers should be required to provide that notification to their customers.¹⁸ U S WEST opposes any sort of nationwide mandatory notification. The affected LECs are best positioned to determine how to inform their customers. In any case, the suggested notification would serve no useful purpose for the vast majority of subscribers; it is far too long and the concepts in it are unfamiliar to most people. The Notice asks whether the notification should be read to new subscribers.¹⁹ Requiring that step would accomplish nothing positive; it would simply tie up the LECs' service representatives – thereby driving up their costs – and confuse customers.

D. Verification And Enforcement (Notice ¶¶ 17-21)

The Notice tentatively concludes that the Commission should implement a method to verify the number of primary lines served by a carrier identified through self-certification.²⁰ U S WEST sees no need for verification, but if the Commission adopts that course, it should do so by means of audits, as tentatively concluded in the Notice.²¹ Those audits should be conducted by outside auditors, rather than by

¹⁸ Notice ¶ 22.

¹⁹ Id.

²⁰ Id. ¶ 17.

²¹ Id. ¶ 18.

the Commission. Any such audit will necessarily require the revelation of customer-specific information; providing that information to any government agency raises significant privacy issues.²²

The Commission should, at all odds, avoid the use of modeling techniques to “verify” primary line counts.²³ A valid model might be useful to detect potential problems, but it cannot prove that a count is inaccurate, and it cannot explain the reasons behind any inaccuracies. If the Commission chooses to utilize a model as an “early warning system,” it must find one more suitable than the hopelessly flawed Hatfield model. The incumbent LECs have explained the defects in Hatfield as a pricing tool;²⁴ it is no more useful for this purpose.

Finally, the Commission seeks comment on the means available to it to enforce this program.²⁵ On paper, the Commission obviously has the authority to enforce its order. It can – as the Notice tentatively concludes – order LECs to correct their billing practices, impose forfeitures and require audits. But these measures are aimed only at carriers who might choose to mischaracterize their lines.

The greater problem here is likely to be customer attempts to avoid paying the higher SLC by providing false information to the incumbent LEC. Whatever

²² U S WEST policy permits the disclosure of customer information to a government agency only under a subpoena.

²³ Notice ¶ 19.

²⁴ E.g., Reply Comments of U S WEST, Inc. To Recommended Decision, CC Docket No. 96-45, filed Jan. 10, 1997 at 13-25.

²⁵ Notice ¶¶ 20-21.

authority the Commission might have to punish such acts, it does not have the practical ability to police the actions of hundreds of millions of telephone subscribers. And if the system gives customers an incentive to misrepresent their situation, many will do so, given the almost certain absence of any adverse consequences.

The Notice tentatively concludes that carriers should be required to notify their customers of the need to identify a single primary LEC and a single primary residence. Such a requirement is necessary (if at all) only for LECs who use self-certification. If a LEC is able to categorize its customers' lines without gathering information from those customers, this notification is worse than useless. It will tie up service representatives, who will need to read the notification and then explain it, thereby increasing costs. Moreover, the notification will likely provide customers the information they need to avoid paying the additional charges for a secondary line, thus increasing the incidence of mischaracterized lines.

IV. CONCLUSION

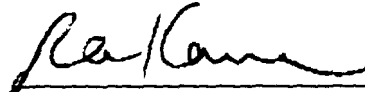
In implementing differentiated charging for primary and secondary lines, the Commission must focus principally on the practicability of the program. Any choice the Commission might make here will present implementation and administrative

difficulties. We believe, however, that a premises-based definition of "primary line," as proposed in these Comments, will minimize those difficulties.

Respectfully submitted,

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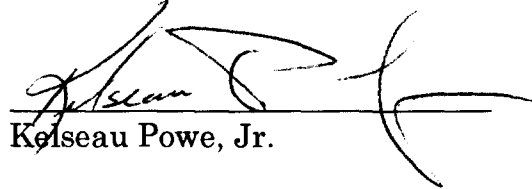
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Exhibit A

	By Billing Account	By Location	Difference to Carriers In P ICCs and Residual CCL Rates
Average 1996 Primary Residence Lines	9,668,967	9,072,154	
Primary Residence Line SLC Rate	\$3.50	\$3.50	
Primary Residence Line P ICC Rate	\$.53	\$.53	
Primary Residence Lines Revenue	\$467,591,244	\$438,729,367	
Average 1996 Non-Primary Residence Lines	596,813	1,193,625	
Non-Primary Residence Line SLC Rate	\$5.00	\$5.00	
Non-Primary Residence Line P ICC Rate	\$1.50	\$1.50	
Non-Primary Residence Lines Revenue	\$46,551,414	\$93,102,750	
Total Residence Revenue	\$514,142,658	\$531,832,117	\$17,689,459

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 25th day of September, 1997, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served, via hand delivery, upon the persons listed on the attached service list.



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